IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4401 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MEHBOOBALI HUSSAINALI MUNI

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner

MR HL JANI, AGP for Respondent Nos. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/08/2001

ORAL JUDGEMENT

1. Heard Mr.D.M.Thakkar, learned advocate appearing on behalf of the petitioner, Mr.H.J.Jani, AGP appearing on behalf of the respondent Nos.1, 2 and 3 and Ms.P.J.Davawala, learned advocate appearing on behalf of

the respondent No.4.

2. In the present petition, the petitioner has challenged the order of detention dated 1/06/2001 passed by the District Magistrate, Amreli under Sub-Section (2) of Section 3 of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the P.B.M. Act"). The present petitioner - detenu has been taken into custody at Rajkot District Jail as a Class-II detenu. The ground of detention has been communicated and supplied to the petitioner by the Detaining Authority under Section 8(1) of the P.B.M.Act. The Detaining Authority - District Magistrate has filed affidavit-in-reply and on behalf of respondent No.1 - the State Government, Mr.P.G.Vyas, Deputy Secretary to the Government Food, Civil Supplies & Consumer Affairs Department has filed affidavit-in-reply and on behalf of respondent No.4 Union of India has also filed affidavit-in-reply, which all have been taken on record.

3. Mr.D.M.Thakkar, learned advocate for the petitioner has challenged the order of detention passed by the Detaining Authority on 1/06/2001 on various ground, but according to him one contention is enough to vitiate the order of detention. Mr.Thakkar has submitted that page-(18) a representation submitted by Advocate of the detenu to the Detaining Authority has not been forwarded by the Detaining Authority to the State Government immediately and within the reasonable time and, therefore, the order of detention is required to be quashed and set aside. Mr.Thakkar has pointed out that after receiving the representation, which has been forwarded by the Detaining Authority to the State Government. The State Government has taken time in deciding the representation, wherein there was a delay, which has not been explained by the State Government and, therefore, also the order of detention is required to be quashed and set aside.

4. Mr.D.M.Thakkar, learned advocate for the petitioner has raised the contention in ground-(g) and pointed out that the representation dated 18/6/2001 made on behalf of the petitioner by the advocate has been considered at the earliest and without any delay. In failing to do so, the continued detention of the petitioner becomes bad in law. Mr.Thakkar has relied upon the decisions of this Court in the case of Urmilaben Navnitlal Gandhi v/s. The Commissioner of Police, Surat City and Others and in the case of Salim Pothiyu Rehmanbhai Belia v/s. District Magistrate, District

Mehsana and Others, reported in 1994 (2) G.L.H. (U.J.) 10 and 11. Mr.Thakkar has also relied upon the decision of the Hon'ble Supreme Court in the case of Rajammal v/s. State of Tamil Nadu and another, reported in AIR 1999 Supreme Court 684.

5. Mr.H.L.Jani, AGP for the respondent Nos.1, 2 and 3 has submitted that the State Government has given reply in Para-(5) against the ground-(g) to the petition to the effect that the representation dated 18/6/2001 made by the petitioner through his advocate, which has been forwarded by the Detaining Authority along with the parawise remarks vide his letter dated 27/6/2001 to the State Government. The Special Branch of Food, Civil Supplies & Consumer Affairs Department has received the representation with parawise remarks from the Detaining Authority on 29/6/2001. The filed of the said representation was prepared by the Special Branch and was placed before the Under Secretary on 29/6/2001 and, thereafter, the filed was placed before the Deputy Secretary. The Deputy Secretary cleared the file with detailed note on 1/7/2001 and on 29/6/2001, the Deputy Secretary was at Rajkot and was busy with the meetings, on 30/6/2001, he went to Porbandar for obtaining signature of the Minister of Civil Supplies in detention matters. Thereafter, the file was placed before the Secretary and the Secretary has cleared the said filed on 1/7/2001 and ultimately, the file was placed before the Hon'ble Minister of Civil Supplies. This Hon'ble Minister of Civil Supplies has rejected the said representation on 2/7/2001, which has been communicated to the detenu by its letter dated 3/7/3001. According to the learned AGP there was no delay in deciding the representation by the State Government, after receiving the same from the Detaining Authority on 29/6/2001. Mr.Jani has also submitted that the Detaining Authority has also filed a reply in para-(13) of the reply. It was pointed out by the Detaining Authority that the representation dated 18/6/2001 was received by the Detaining Authority on 20/6/2001 and State Government has approved the order of detention on 8/6/2001 and, thereafter, the representation was forwarded to the State Government. In view of the replies filed by the Detaining Authority and the State Government, Mr.Jani has submitted that after receiving the representation from the petitioner - detenu through his advocate a due care has been taken to decide the representation within the reasonable time and the State Government has decided immediately after receiving the same from the Detaining Authority and because of the parawise remarks are required to send along with the representation by the

Detaining Authority and, therefore, there was a delay in forwarding the representation by the Detaining Authority to the State Government. However, Mr.Jani has also submitted that looking to the facts and circumstances and materials on record, the order of detention is legal and valid and there was compelling circumstances with the Detaining Authority to pass the detention order otherwise the activities which have been carried out by the petitioner which adversely affected the maintenance of Civil Supply as contemplated under Section 3(1) of the P.B.M.Act. Therefore, the order of detention has rightly been passed by the Detaining Authority which does not require any interference by this Court.

6. Ms.P.J.Davawala, learned advocate for the respondent No.4 has relied upon the reply filed by the respondent No.2. Ms.Davawala has also submitted that looking to the facts and circumstances and materials on record, the order of detention has rightly passed by the Detaining Authority. Ms.Davawala has also submitted that the order of detention, which has been passed by the Detaining Authority is legal and valid because there were compelling circumstances which justified the detention order. Therefore, Ms.Davawala has also submitted that in such circumstances, no interference is required by this Court.

7. I have considered the submissions of learned advocates of respective parties. Looking to the contentions which have been raised by Mr.D.M.Thakkar, learned advocate for the petitioner a representation dated 18/6/2001 which has been addressed to the Detaining Authority received by the Detaining Authority on 20/6/2001 which remained pending with the Detaining Authority upto 27/6/2001 and it was forwarded to the State Government by letter dated 27/6/2001. Therefore, there was a delay in forwarding the representation by the Detaining Authority and the order of detention has been approved by the State Government on 8/6/2001 then the Detaining Authority has no power and, therefore, it is a duty to forward the representation immediately to the State Government for his consideration. The delay which has been occurred in forwarding the representation by the Detaining Authority to the State government is remained unexplained though specific contention has been raised by the petitioner - detenu in ground-(g) of the petition. Para-13 of the reply filed by the Detaining Authority, wherein the Detaining Authority has not given any explained as to why the representation is remained with him from 20/6/2001 till 27/6/2001. The State Government has filed affidavit-in-reply wherein the Detaining

Authority has not given any explanation as to why the representation is remained pending with the Detaining Authority from 20/6/2001 till 27/6/2001. In the said reply filed by the State Government, the decision of rejecting the representation, which has been taken on 2/7/2001, whereby the representation which was forwarded by the Detaining Authority was received by the State Government on 29/6/2001 so the representation is remained not decided on 30/6/2001, 1/7/2001. The Deputy Secretary was at Rajkot and was busy with the meetings on 30/6/2001 and, therefore, there was a delay in deciding the representation but such ground considered cannot be justified in not deciding the representation immediately. It is a duty of the State Government to consider the representation immediately when it was received on 29/6/2001 and if the Deputy Secretary was busy with the meeting and was not available at Gandhinagar, such ground can not be justified the delay, which was occurred in the present case. The view taken by the Hon'ble Apex Court in the Case of Rajammal v. State of Tamil Nadu and another, reported in AIR 1999 Supreme Court 684, wherein the Hon'ble Apex Court has considered the detenu's representation on the ground of absence of the Minister at Headquarters not sufficient to justify delay. Similarly in the present case also, the Deputy Secretary not in Headquarters on 29/6/2001 and 30/6/2001. Therefore, the representation was not decided immediately by the State Government delay in deciding the representation cannot be justified because the absence of Deputy Secretary at Headquarters on 29/6/2001 and 30/6/2001. The relevant para of the Hon'ble Apex Court has referred above is quoted as under :-

> "It is constitutional obligation of the Government to consider the representation forwarded by the detenu' without any delay. Though no period is prescribed by Art.22 of the Constitution for the decision to be taken on the representation the words "as soon as may be" in Cl.(5) of Art.22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is lies. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation such delay will

> adversely affect further detention of the prisoner. In other words, it is for the authority considered to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Thus in the present case, the government which received remarks from different authorities submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thereafter, the file was submitted before the Minister who received it while he was on tour. The Minister passed the order after five days and there was no explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only after five days is not a justifiable explanation, when the liberty of a citizen guaranteed under Art.21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

8. In respect to the second contention that the representation dated 18/6/2001, which was received by the Detaining Authority on 20/6/2001, which remained pending with the Detaining Authority upto 27/6/2001, which has not been explained by the Detaining Authority though the Detaining Authority has filed a reply against ground-(g) of the petition in para-(13) of the reply. Such delay remained unexplained, when the representation has not been attended by the Detaining Authority about six days from the date of receiving the representation on 20/6/2001, which is inaction on the part of the Detaining Authority vitiated the order of detention, as view taken by the Division Bench of this Court in the case of Urmilaben Navnitlal Gandhi v/s. The Commissioner of Police, Surat City and Others, reported in 1994 (2) G.L.H. (U.J.) 10 and in the case of Salim Pothiyu Rehmanbhai Belia v. District Magistrate, District Mehsana and Others, reported in 1994(2) G.L.H. (U.J.) 11. The relevant observations of the aforesaid decisions are quoted as under :-

"Referring to the decision in Navalshanker Ishwarlal Dave v. State of Gujarat, AIR 1994 SC 1496, it is observed that the detaining authority has no power to consider the representation of the detenu after the order of detention is approved by the State Government.

Further more, the Court noted that the detaining authority received the representation on 14th November 1993 and it rejected the same on 15th October, 1993. The representation was forwarded to the State Government on 16th October, 1993. The office, however, forwarded it to the State Government on 19th/21st October, 1993. The same was received on 26th October 1993 and rejected by the State Government on 27th October 1993. The delay of 5 days, i.e. from 16th October to 21st October, 1993 in forwarding the representation has not been explained by the respondents in any manner except that Shri Shelat for respondents has urged that one holiday intervened. The Court observed that the office of the detaining authority was not alive to the urgency of forwarding the representation to the State Government for its consideration on merits. Applying the ratio in Harish Pahava v. State of Uttar Pradesh, AIR 1981 SC 1126, wherein similar delay was held to be unreasonable, vitiating the continued detention of the detenu, the delay of five days on the part of the office of the Commissioner of Police, Surat City in forwarding the representation against the detention of the detenu was thus unreasonable and not properly explained vitiating the continued detention of the detenu."

"The Proposal of detention was moved on 27th June 1993. The District Magistrate, Mehsana passed the order of detention of the petitioner on 18th September 1993 and served the same on the petitioner on 2nd December 1993. The order of detention was approved by the State Government on 23rd September 1993. The Advisory Board gave its opinion on 6th January 1994 in favour of continued detention of the petitioner. The State government confirmed the order of detention on 15th January 1994. The petitioner made a representation against his detention on 3rd February 1994 and addressed the same to the District Magistrate, District Mehsana who rejected the same on 5th February 1994.

Relying on Navalshankar Ishwarlal Dave v. State of Gujarat, AIR 1994 SC 1496, it is held that the detaining authority is left with no power to consider and to reject any representation received from the detenu against his detention even if it is addressed to the detaining authority and the detaining authority has to pass on the representation to the State Government for its consideration. In the present case, it is not in dispute that the petitioner's representation, made after the State Government had confirmed the detention, was not forwarded to the State Government for its consideration on its merits. Such inaction on the part of the District Magistrate, District mehsana vitiated the continued detention of the petitioner.

9. The view taken by the Hon'ble Apex Court in the case of Harish Pahwa v. State of U.P. and others, reported in AIR 1981 Supreme Court 1126. The relevant observation of the said decision is quoted as under :-

"In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representation made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it aculminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Against, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is considered. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasis that it is the duty of the State to proceed to determine representations

> of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

10. In view of the aforesaid observations made by the Hon'ble Apex Court as well as Division Bench of this Court. Looking to the facts of the present case that the representation submitted by the petitioner dated 18/6/2001, which was received by the detaining authority on 20/6/2001, which remains pending upto 27/6/2001 and not forwarded to the State Government. Though order of detention has approved by the detaining authority on 18/6/2001 this delay is not explained by the Detaining Authority as to why the representation was not forwarded immediately to the State Government. The State Government has also not considered the representation immediately and, therefore, there was delay of two days, which has not been explained properly by the State Government. The representation was received by the State Government on 29/6/2001. The Deputy Secretary was not in Headquarters on 29/6/2001 and 30/6/2001 and, therefore, the representation was not attended by the State Government and ultimately, the representation was rejected on 2/7/2001 which communicated to the petitioner on 3/7/2001. Therefore, looking to the facts of the present case and observations made by the Hon'ble Apex Court as well as Division Bench of this Court. According to my opinion the representation was not forwarded immediately to the State Government by the detaining authority which adversely affected the legal right of the petitioner under Article 22(5) of the Constitution of India and, therefore, according to my opinion, the order of detention is required to be quashed and set aside.

11. For the aforesaid reasons, the petition succeeds and the same is allowed. The order of detention dated 1/6/2001 is vitiated and resulted to quash and set aside. The detenu Shri Mehboobali Hussainali Muni who has been detained at District Jail, Rajkot be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

[H. K. Rathod,J.]

V.R.Panchal